IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5233 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVINDBHAI MAHIPATBHAI DESAI SINCE DECEASED THROUGH HIS - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1, 1.2.1,1.2.2
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 27/11/2006

ORAL JUDGMENT

1. The short facts of the case are that on 19.5.1956 the order was passed by the authority for grant of

the land to Mahipat Manilal Desai whose heirs are the petitioners herein, on payment of the occupation price of the land bearing Survey No.479 and No.966/2 as old tenure. As per the petitioners, the occupation price was paid after the order dated 19.5.1956. However, as per the order communicated by the Collector dated 10.1.1958, if any of the Inamdars did not deposit the amount of occupation price on or before 30th April, 1956, all lands were to vest with the State Government and, therefore, accordingly as occupation price qua the land in question was not paid, vide Entry No.3858 dated 19.9.1958, the land was recorded as vested to the State Government together with the other lands. On 15.8.1988, the petitioners herein preferred appeal being Appeal No.50/1988 before the Dy. Collector against the Entry No.3859 for treating the land as land vested to the Government. The said appeal came to be dismissed by the Dy. Collector as per the order dated 25.11.1988. The petitioners preferred further revision before the Collector being No.2/1989, which came to be dismissed on 2.4.1990. The matter was further carried before the State Government in revisional jurisdiction being No.37/1990 and the said revision of the petitioners

came to be dismissed on 31.1.1991. In all the proceedings through out, it appears that the matters were concluded against the petitioners, not only on the ground of limitation, but also on the ground that as occupation price was not paid before 30th April, 1956, the land vested to the Government and the entry was rightly effected.

2. It appears that after the dismissal of the revision by the State Government, the petitioners made representation to the State Government to grant the lands in question and by vide *Yadi* dated 8.6.1992, the Government decided to grant the land to the petitioners, excluding the land over which the Government quarters were constructed. It deserves to be recorded that after the land in question vested to the Government, the same were reserved for Government quarters, the possession of the same was also handed over to the authority and thereafter the Government as per order dated 8.6.1992 had taken decision to grant the land in question to the petitioners as old tenure, excluding the land over which the Government quarters were in existence. Based on the said *Yadi* dated 8.6.1992, the State Government communicated to the District Collector vide letter dated 15.7.1992 for taking action in the

matter of allotment of the land, excluding the land in which the Government quarters were already constructed. As per the petitioners, since the Collector did not take any action for allotment of the land in spite of the direction given by the Government, Special Civil Application No.385 of 1993 and other was preferred by the petitioners for implementation of the Government order dated 8.6.1992. However, it appears that by the subsequent order dated 13.3.1993, the State Government itself revoked the earlier order dated 8.6.1992 and, therefore, the said petitions were disposed of as having become infructuous. At that stage also the petitioners did not make any grievance against revocation of the earlier order dated 8.6.1992 passed by the State Government.

3. It appears that thereafter the petitioners further continued to pursue the matter at the level of the State Government for grant of the land and vide communication dated 23.7.1997 read with the correction order dated 5.8.1997, it was decided once again by the State Government to allot the land to the petitioners. Pending the aforesaid, the petitioner had also preferred Civil Suit No.184 of 1993 for allotment of the land, but as the State

Government once again decided to allot the land as per the order dated 23.7.1997 read with the order dated 5.8.1997, the petitioner withdrew the said Civil Suit, which was pending before the Civil Court. It appears that on 17.2.1998 the petition was preferred by one Gauriben Dungarbhai Waghela, in her capacity as the President of the Viramgam Municipality and Jagdishbhai Makarbhai Dalvadi, in his capacity as Vice-President of the Municipality as public spirited litigants, being Special Civil Application No.6539 of 1997 in this Court, for challenging the legality and validity of the action of the Government to allot the land in question to the petitioner. In the said petition, which was treated as Public Interest Limitation (hereinafter referred to as "PIL" for short), the Division Bench of this Court on 17.2.1998 passed the following order:

> *" The issue raised in this petition relates to assignment of land, comprised in Survey Nos.479 and 966/2 of Viramgam Prant, Ahmedabad. In the affidavit filed in reply on behalf of the 1st respondent, it is averred that Collector would look into the matter of re-granting of the land*

in question after verifying whether any land was vacant after the said plot was already utilised for construction of Government Quarters, Judicial Complex and other purposes. It is also stated that the Collector was also asked to look into the other aspects pertaining to the regranting of the land. It is for the said purpose, Yadi was stated to have been sent to the Collector on 23.7.1997.

Since the Collector has been directed by the State Government to examine the issue relating to the grant of this land comprised in Survey Nos.479 and 966/2 of Viramgam Sim in Viramgam Taluka, we direct the Collector to pass final order on the said Yadi in accordance with law as expeditiously as possible and to make it available to this Court on 17.3.1998. Whatever be the order of the Collector, the land should not be parted with and it should be maintained in the position as on today, until otherwise directed by this Court."

4. Since the matter was at the stage of consideration by the District Collector, the Court observed that the Collector shall take the decision, but the land shall not be parted with and the position as prevailing on the date of order shall be maintained until and otherwise directed by this Court. Thereafter, it appears that the State Government itself cancelled its order and consequently the Division Bench of this Court while hearing the Public Interest Litigation on 15.4.1998 passed the following order:

> *" In the course we are adopting, we do not think it necessary to narrate the contentions raised by the parties in this Special civil Application. Suffice it to say that on 17.2.1998, we passed order, directing the Collector to examine the issue relating to the grant of land comprised in Survey Nos. 479 and 966/2 of Viramgam Sim in Viramgam Taluka. Consequent to that order, District Collector, Ahmedabad passed order No.CB/ LND.2/363 dated 17.3.1998. The operative portion of the order reads :-*

"... In this matter, Gauriben D. Vaghela had filed a Special C.A. No.6539/97 before the Hon. Gujarat High Court and prayed for reliefs wherein and as intimated vide letter referred at Ref.No.2 hereinabove from the Liaison Officer of High Court of Gujarat, upon issuance of instruction in accordance with the order passed by this High Court for regranting the lands in question to the applicants and to issue necessary orders as per rules in this regard by 17.3.98,the same was required to be issued. But under these circumstances, vide order at Ref. No.3 hereinabove from the Revenue Department to Govt., it has been ordered to cancel the approvals issued to the applicants herein vide Ref. No.1 hereinabove in regard to grant of lands in question.

Therefore, in view of the aforesaid facts and in view of the circumstances in view of the Ref. No.3 cited order from the Revenue Deptt. to Government as also in view of the judgment of the Hon. High Court of Gujarat, since no orders in regard to regranting the lands in question are required to be made, the demand for regranting the lands in question is hereby rejected...."

In the light of the above order passed by the Collector, the grievances voiced by the petitioner in this

petition have been redressed. No further order is called for. Petition is accordingly dismissed as having become infructuous. Notice is discharged. Status quo order is vacated."

5. Accordingly, the petitions were disposed of and the pertinent aspect is that no liberty was prayed or reserved to the petitioners to challenge the decision of the Government for withdrawal of its earlier order by separate proceedings. It appears that thereafter the present petition is preferred by the petitioner, challenging the order of the State Government as well as of the Collector, whereby the earlier instructions for allotment of the land are cancelled by the State Government and the District Collector has acted upon such instructions. It is also prayed by the petitioner in the petition that the respondent be directed to implement its earlier order dated 23.7.1997 and order dated 5.8.1997 for grant of the land to the petitioner as per the said orders.

6. I have heard Mr.Patel, learned Counsel appearing for the petitioner and Mr.Desai, learned AGP for the State Government.

7. It is not in dispute that the petitioner had carried the matter before the higher forum in the Entry proceedings concerning to the vesting of the land to the State Government. It is also not in dispute that the petitioner lost up to the State Government in revisional jurisdiction in such proceedings, vide the order dated 31.1.1991/16.3.1991. As such, when the State Government in exercise of the revisional jurisdiction as quasi judicial authority, confirmed the entry for vesting of the land to the State Government by dismissal of the revision, it would not be open to the State Government to reopen the same question in its executive function for grant of the land. The power exercised by the State Government as quasi judicial authority stands final unless such order is reversed by the higher forum.

8. As per the basic structure of separation of power, if an order of quasi judicial authority

is confirmed by the State Government as quasi judicial authority, the exercise of the power is by the Government as quasi judicial authority operates over its power as an executive. Once the power is exercised by the State Government as quasi judicial authority and the order of the State Government as quasi judicial authority is not carried before any higher forum in normal circumstances, it is not open to the State government to exercise the executive power, which results into nullifying sanctity of the order passed as quasi judicial authority. If the matter is examined, keeping in view of the aforesaid aspects, as per the entry proceedings the land stood vested to the Government on account of the non-payment of the occupation price prior to 30.4.1956 and as a consequence thereof, the land remained with the Government, in view of the quasi judicial orders passed by the Government and, therefore, neither it could be treated as *Inam* land, nor could be allotted to the petitioner.

9. The aforesaid is coupled with the circumstances

that the land as such not only did vest to the Government, but the possession thereof was also entrusted to the concerned Department of the State Government for construction of Government quarters as per the Town Planning Scheme. Even in the Town Planning Scheme, the land was shown as that of the Government, which was reserved for Government quarters and has been actually used for Government quarters. Therefore, in view of such circumstances, the action of the Government as an executive authority of allotting the land to the petitioner resulting into nullify the orders of the Government as quasi judicial authority could not have been passed.

10. The fact remains that the Government in spite of the aforesaid position, exercised the executive power and had taken decision on paper to allot the land to the petitioner as per *Yadi* dated 8.6.1992 and further communication thereof dated 15.7.1992 to the District Collector, Ahmedabad. The petitioner also preferred writ petition before this Court being SCA No.385 of

1993 and others for implementation of the aforesaid orders passed by the State Government for allotment of the land in question. Pending the said petition, the Government revoked its earlier order vide order dated 29.3.1993 and the petition came to be disposed of by this Court as had become infructuous vide order dated 15.4.1994 passed by this Court in SCA No.385 of 1993 and others. At that stage also no grievance was raised by the petitioner that the order of revocation is illegal or that the petitioner is desirous to challenge the order of the State Government dated 29.3.1991 for revocation of its earlier order/instructions dated 8.6.1992 and others. Therefore, it can rather be said that the petitioner had no grievance on 15.4.1994 when this Court disposed of the writ petition preferred by the petitioner on the basis that the State Government had revoked its earlier order for allotment of the land to the petitioner.

11. Even thereafter in view of the very circumstances that earlier the question stood

concluded as per the order of the State Government exercising the quasi judicial power and it could not have been nullified while exercising executive power, once again the decision was taken vide order dated 23.7.1997 read with the order dated 5.8.1997 of the State Government for grant of the land to the petitioner as old tenure land. It deserves to be recorded that it is not even case of the petitioners that in the proceedings of Civil Suit No.184/1993, orders were passed by Civil Court directing the Government to allot land to the petitioner and, therefore, the Government had passed the orders for allotment of the land. The said decision of the State Government dated 23.7.1997 read with the order dated 5.8.1997 were subject matter of the writ petition before this Court in public interest litigation being SCA No.6539 of 1997. The Division Bench of this Court, when passed the order on 17.2.1998 expressly provided that since the State Government had directed the Collector to examine the matter and as the matter was yet to be

examined by the District Collector, the matter might be considered by the District Collector and, therefore, permitted the Collector to consider the matter, but prohibited the parting of the land since the matter was under judicial consideration of the Division Bench of this Court in the said PIL. Thereafter, as recorded hereinabove, since the government itself cancelled its earlier instructions and consequently the Collector disposed of the matter, the Division Bench of this Court when passed the order on 15.4.1998, observed that the grievance voiced by the petitioner in the petition has been redressed and the petition was disposed of as having become infrustuous. The said order dated 15.4.1998 came to be passed by the Division Bench after hearing the petitioners, who were parties to the proceedings in the said petition. No grievance was raised by the petitioners at the relevant point of time when the Division Bench accepted the action of the State Government and of the District Collector both for cancelling the

instructions of grant of the land. Neither the permission to challenge was applied by separate proceedings, nor the observations are made by the Division Bench for permitting the petitioner to challenge the said decision of the State Government by separate proceedings. Therefore, it could be said that the order of the State Government cancelling the grant and the order of the Collector in pursuance thereof, were accepted and the Division Bench of this Court found it proper to dispose of the petition as having become infructuous and it is implied that the petitioner at the relevant point of time had no grievance to the order of the State Government cancelling the earlier order of grant of the land and also to the order of the District Collector in pursuance of the order of the State Government.

12. Mr.Patel, learned Counsel for the petitioner raised the contention that even if the express permission is not granted by the Division Bench when order dated 15.4.1998 was passed in SCA No.6539 of 1997, the petitioners are well within

their rights to challenge the order of the State Government cancelling the earlier order for grant of the lands in question and so will be the position for the order of the District Collector. He submitted that there is neither res judicata, nor any bar operates to the petitioner in maintaining the challenge to the said order of the State Government. He submitted that, therefore, this Court may independently examine the challenge made by the petitioner in this petition to the orders of the State government and of the District Collector for cancelling the earlier order for grant of the land.

13. Mr.Patel, learned Counsel appearing for the petitioner, in supporting the challenge on merits, submitted that the State Government has passed the order of cancelling its earlier order without giving any opportunity of hearing to the petitioner and, therefore, the order is in breach of the principles of natural justice and, therefore, the order of the State Government is illegal. He submitted that the District

Collector has not at all independently applied the mind and has simply acted upon the subsequent order of the State Government and, therefore, the order of the District Collector would be rendered arbitrary and, therefore, the order of the State Government as well as of the District Collector for cancellation of the earlier order and non-granting of the orders are illegal and, therefore, this Court may quash both the orders.

14. If the matter is examined on the aspects of merits for maintaining the challenge made to the order passed by the State Government and of the District Collector, it is true that the opportunity of hearing has not been given, but in the matter of entertaining the complaint for breach of principles of natural justice, while exercising the power under Article 226 of the Constitution of India, the law has developed further by applying “the useless formality theory” in as much as unless prejudice is satisfactorily demonstrated before the Court, this Court may decline to entertain the

complaint or may decline to interfere with the orders passed by the authority in breach of the principles of natural justice. The reference may be made to the recent decision of the Apex Court in case of **“Canara Bank vs. V.K. Agrawal”, reported in AIR 2005 SC, 2090**, more particularly the observations made at paragraphs 5, 6, 18 and 20 of the Apex Court. If the matter is examined to trace the prejudice to the petitioner, it is apparent that the State Government in exercise of the quasi judicial power confirmed the action of vesting the land to the State Government and it was by exercise of the executive power the order dated 23.7.1997 read with the order dated 5.8.1997 the decision was taken by the State Government to grant the land to the petitioner. Such orders ex facie were resulting into nullifying the effect of the quasi judicial orders passed by the State Government, which were not challenged by the petitioner before any higher forum, nor by the State Government itself before any higher forum. Therefore, if while exercising the executive function, the quasi

judicial orders of the State Government are nullified, the action of the State Government can be said as illegal and ultra vires its powers. If the vesting of the land to the Government is confirmed by the State Government as a quasi judicial authority and such order is not challenged before any higher forum, any action of the State Government nullifying the effect of such quasi judicial order in exercise of the executive power even otherwise also cannot be maintained in the eye of law. The aforesaid is coupled with the circumstances that more or less similar order came to be passed by the State Government on 8.6.1992 and as the same was not acted upon and Special Civil Application No.385 of 1993 for its implementation was preferred and at that stage when the Government revoked the order dated 8.6.1992 for grant of the land as per its subsequent order dated 29.3.1993 and when the petition was disposed of as had become infructuous, the petitioner made no grievance. Therefore, in view of the aforesaid circumstances, it can be said that the

order dated 23.9.1997 read with the order dated 5.8.1997, which was for grant of the land to the petitioner, both decisions were illegal and could not be maintained in law.

15. Mr.Patel, learned Counsel for the petitioner attempted to submit that earlier orders of the State Government in exercise of the quasi judicial power were pertaining to entry proceedings and he further submitted that the entries are having value for fiscal purpose and it would not confer any title to the Government, nor divest the title of the petitioner, if any, and, therefore, it cannot be said that the land has conclusively vested to the Government and, therefore, the order of the State Government for grant of the land would not result into nullifying the orders passed by the state Government as quasi judicial authority.

16. The said contention raised by Mr.Patel cannot be accepted for the simple reason that the entry is not for entering into the transaction, but is for vesting of the land to the Government. The entry related to the vesting of all the lands to

the State Government on account of the non-payment of the occupancy price prior to 30th April, 1956. It is true that for the land in question, the order came to be passed by the authority for grant of the land to the petitioner on 19.5.1956 on payment of occupancy price, but thereby the effect of the vesting to the Government on 30th April, 1956 would not stand abolished. Further, in any case, all such aspects were examined by the higher authorities throughout and the vesting of the land in the State Government is not disturbed by maintaining the entry for vesting of the land in the Government. Therefore, the said contention of Mr.Patel cannot be accepted.

17. If the order passed by the state Government for grant of the land dated 23.7.1997 read with the order dated 5.8.1997 were illegal and without there being any lawful authority with the Government in view of the reasons recorded hereinabove, the subsequent action of the State Government for withdrawal of its earlier order as per the order dated 12.3.1998 and the order

of the Collector dated 17.3.1998 based on the same, do not deserve to be interfere with on the ground of complaint of breach of principles of natural justice, since no useful purpose would be served in issuing the writ by entertaining the complaint for the breach of the principles of natural justice. Further, if the writ powers are exercised on the complaint for breach of the principles of natural justice, the consequence would be that illegal order by the State Government dated 23.7.1997 read with the order dated 5.8.1997 would be put to life and the situation would be created resulting into operation of the illegal order of the State Government and, therefore, also it is not fit case for exercise of the discretionary, equitable jurisdiction of this Court under Article 226 of the Constitution of India.

18. The District Collector while passing the order dated 17.3.1998 has acted upon the pendency of the proceedings of SCA No.6539 of 1997, the orders passed by Division Bench of this Court and the factum of withdrawal or cancellation of

the instructions by the State Government for regrant of the land. Therefore, it cannot be said that there is no application of mind whatsoever on the part of the District Collector while passing the impugned order dated 17.3.1998.

19. In view of the aforesaid observations and discussions, it appears that the impugned orders passed by the State Government dated 12.3.1998 as well as the order dated 17.3.1998 passed by the District Collector do not deserve to be interfered with by this Court while exercising the power under Article 226 of the Constitution of India.

20. Even otherwise also, Mr.Desai, learned AGP is right in submitting that there is no express permission granted by the Division Bench of this Court when it passed the order on 5.4.1998 in SCA No.6539 of 1997 for challenging the action of the State Government by separate proceedings. It is true that before the Division Bench of this Court in the proceedings of SCA No.6539 of 1997 neither the petitioner applied, nor any

observations were made permitting the challenge to the orders passed by the State Government cancelling its earlier order for grant of the land to the petitioner. However, if the matter is examined in light of the principles of constructive res judicata, prima facie it can be said that the petitioner could not have resorted to a separate proceeding for challenging the legality and validity of the orders of the State Government. I find it proper not to conclude on the said aspect in view of the peculiar facts and circumstances that on merits this Court has found as recorded hereinabove that the orders passed by the State Government cancelling its earlier order and the order of the Collector do not deserve to be quashed by this Court in exercise of the power under Article 226 of the Constitution of India.

21. In view of the above, the petition fails. Hence, the same is dismissed. Rule discharged. I.R., stands vacated. There shall be no order as to costs.

22. At this stage, Mr.Patel, learned Counsel

appearing for the petitioner prays that the interim relief be continued for some time, so as to enable the petitioner to approach before the higher forum. Considering the facts and circumstances, the interim order shall continue to operate for a period of four weeks from today.

27.11.2006 **(Jayant Patel, J.)**

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